IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5228 OF 1991

Madhukar Rajaram Pethe .. Petitioner

vs

M/s Damodardas Ganpatdas Sugandhi ... Respondent

..

Mr.Nitin Mule for for Petitioner

Mr.N.V.Walawalkar for Respondent

..

WITH WRIT PETITION NO. 1976 OF 1991

M/s Damodardas Ganpatdas Sugandhi .. Petitioner

vs

Madhukar Rajaram Pethe .. Respondent

..

Mr.N.V.Walawalkar for Petitioner

Mr.Nitin Mule for Respondent

..

WITH CIVIL APPLICATION NO. 1994 OF 2004

IN

WRIT PETITION NO. 5228 OF 1991

Mr.N.V.Mule for Applicants/Petitioners

Mr.N.V.Walawalkar for Respondents

CORAM : D.G.KARNIK, J

DATE: 30TH AUGUST, 2004.

P.C.

1. Writ Petition No.5228 of 1991 is filed by the petitioner-landlord in whose favour both partial decree for possession has been passed by the lower appellate Court praying that the decree for possession of the whole of the premises should have been passed. Writ Petition No. 1976 of 1991 is filed by the tenant challenging the partial decree for possession and praying that entire suit should have been dismissed. Civil Application No.1994 of 2004 has been filed by the landlord for the purpose of amendment of the plaint.

2. The original suit was filed by the landlord for possession inter alia on the ground of bonafide requirement for himself and his sons. During the pendency of the Writ Petition, landlord died and his legal representatives have been brought on record. By filing a Civil Application, the legal representatives are seeking to plead their requirement in the light of the subsequent events. It is common ground between the parties that the original need has undergone a substantial change and the initial need of the landlord for his personal use does not survive. What is now claimed is need of the children or the heirs of the original petitioner, who are brought on record. In view of the fact that the original suit was filed 19 years ago

and need has undergone a substantial change, it would be appropriate to permit the landlord to amend the plaint and thereafter permit the defendants to file additional written statement and to hear the matter afresh.

3. In view of this, Civil Application No. 1994 of 2004 is allowed. The applicant shall carry out the amendment in the plaint within a period of two weeks in this Court itself. Thereafter the record be sent back to the trial Court. The parties shall appear in the trial Court on 1st November, 2004. The defendants shall thereafter file additional written statement to the amended plaint within a period of two months. After the pleadings are completed, the trial Court shall hear the suit expeditiously and decide the matter in the light of the amended pleadings.

4. The impugned judgment is set aside and the matter is remanded back to the trial Court for decision afresh. Parties to appear before the trial court on 1st November, 2004. Record be sent back to the trial Court immediately after amendment is carried out.

5. Authenticated copy allowed.

D.G.KARNIK, J